

REMARKS/ARGUMENTS

In the Office action dated , the Examiner, in “Response to Arguments,” alleged that the functionality of Applicants’ amended claim in response to the previous Office Action were not supported by the Specification and Drawings. The Examiner then rejected claims 1-16 under 35 U.S.C. § 112, first paragraph, alleging that the claims do not contain subject matter which was adequately described in the Specification. The Examiner cited 35 U.S.C. § 112, 2d paragraph, stating that claims 1, 7 and 12 were unclear, did not reject such claims with specificity under 35 U.S.C. § 112, 2d paragraph, but asked for clarification of the claims in view of the Specification. The Examiner then merely repeated his previous rejection of the claims, to wit: Claims 1-4 and 12-14 were rejected under 35 U.S. C. § 102(e) as allegedly being anticipated by U.S. Patent Publication No. 2005/011032 of Airas. Claim 5, 6, 15 and 15 [sic] were rejected under 35 U.S.C. § 103(a) as being unpatentable over ‘032 in view of U. S. Patent No. 5,974,312 to Hayes *et al.* This rejection has been once again been interpreted by Applicants as applying to claims 5-11. There is no specific rejection of claim 16 under prior art noted in the Office action. It should be noted that the error by the Examiner in stating the 35 U.S.C. § 103(a) rejection was the same as the error made in the previous Office Action, which was brought to the Examiner’s attention in response to that Office Action, and which the Examiner has chosen to ignore. Thus, it is clear that the Examiner is not taking adequate time to read Applicants’ submissions, and that the Examiner has not really read the Specification or Applicant’s previously presented arguments. Had the Examiner done so, it is clear that this case would have been allowed, as the art cited and applied by the Examiner does nothing to anticipate nor render obvious Applicants’

invention as claimed herein. Rather than file an Appeal at this point, however, Applicants' present amended claims in the hopes that the Examiner will now understand Applicants' invention.

In summary, as best understood by Applicants: claims 1-16 stand rejected under 35 U.S.C. § 112, 1st paragraph; Claims 1, 7 and 12 are rejected(?) under 35 U.S.C. § 112, 2d paragraph, Claims 1-4 and 12-14 stand rejected under 35 U.S. C. § 102(e), and claims 5 - 11 stand rejected under 35 U.S.C. § 103(a). There is no rejection of claim 16 under either 102 or 103, and there is no discussion of the reasons why claim 15 is rejected under 103. As claim 15 contains the same limitations as claims 5 and 11, and whereas claim 16 contains the same limitations as claim 6, Applicants will discuss the claims as if the Examiner had correctly cited the reasons for rejection.

In the Specification, no changes.

In the Claims, claims 1, 2, 3, 7, 8, 9, 12 and 13 are amended.

The Invention

As set forth in the claims, and in Response to the previous Office Action, the invention is a mobile communication devices which incorporates, in addition to the usual mobile communication device hardware/software, a CCD camera, and a communication link therebetween. The invention provides a method of downloading data to a mobile communication device (MCD), *e.g.*, cellular phone, PDA, *etc.*, also referred to as a portable communication device (PCD), wherein the mobile communication device is equipped with an optical data capture mechanism, *e.g.*, a CCD camera, and also provides an algorithm to interpret the data, the

interpretation algorithm (page 4, line 1). A control process (page 4, lines 1-5) controls both the CCD camera and the interpretation algorithm, which takes data presented to the MCD in computer readable form, *e.g.*, as a bar code or any other computer readable representation. The control process may interact with the PCD's user interface to take input from, or provide feedback to, the user regarding the current state of the CCD and the interpretation algorithm, which algorithm is operable to decide whether the volume of data gathered by the CCD can be stored in a single file in the MCD memory, or whether more than one file will be required, and is also operable to convert the data into a graphical representation. The control process also may respond to information embedded in the optical data.

The Applied Art

U.S. Patent Publication No. 2005/0119032-A1 of Airas describes a MCD for capturing and displaying graphical images.

U. S. Patent No. 5,974,312 to Hayes, Jr. *et al.*, describes a technique for reprogramming computer-based devices.

Response to Examiner's Statements/Questions

In the "Response to Arguments" section on page 2 of the Office action, the Examiner states that "...this function of the MCD as amended in not sufficiently supported in the Specification or Drawings." The Examiner is invited to read the Specification, page 4, line 6 through page 5, line 13 while viewing Fig. 1, which clearly supports the claim language of the previous amendment and of the instant amendment. One of ordinary skill in the art, having read the Specification as filed, would understand that the data is provided in computer readable form

by an instrumentality, which need not be defined, is captured by the CCD in the MCD and is either in binary, or other computer readable, form at that point, or converted to binary, or other computer readable form, which is then used to a graphic representation, the data then being stored in the MCD. The claims have been amended to specifically recite the instrumentalities used and their function, as described in the Specification as filed.

As to the 35 U.S.C. § 112, first paragraph, rejection of claims 1-16, again, even a cursory reading of the Specification with a view of the Drawings would reveal the presence of all claim elements therein, which would be readily understood by one of ordinary skill in the art. The Examiner seems to be taking an unreasonable position with respect to what Applicants must recite in their Specification and claims, after all, the Specification and claims are directed to one of ordinary skill in the art, and it to such a person that this case is written. Applicants have pointed to exact locations in the Specification and drawings where the Examiner will find support for the claim language. It is apparent from the near exact copy of the prior Office action into the latest Office action that the Examiner has not read the Specification, nor has the Examiner read Applicants' last response. **When the Examiner looks at the submitted material, the Examiner will find that it is the interpretation algorithm and the control process which provide the functionality recited in the claims.**

Turning to the 35 U.S.C. § 112, 2d paragraph request for clarification, which does not seem to be based on either a statutory nor a regulatory requirement, it is believed that the current amendments to claims 1, 7 and 12 have resolved this issue. Applicants strongly assert that the meaning of these claims is clear as filed and previously amended, and has amended to

claims solely as an aid to the Examiner in an attempt to advance prosecution of this Application.

The Claims

Claim 1 has again been amended to clarify where the steps of the method of the invention take place, and what instrumentalities in the MCD/method of the invention perform such steps. '032 describes a technique for capturing and displaying graphics on a MCD, however, several elements of claim 1 are missing from the teaching of '032. Specifically, there is no teaching that '032 has any mechanism for determining whether the data can be stored in a single graphics file. In fact, '032 clearly teaches away from the claim:

[0076] gallery communicator, for sending OTA a selected gallery and for receiving a transmitted gallery (and, optionally, automatically recognizing a received object as a gallery), and for storing a received gallery in a memory location in the receiving device (*and for asking the user which gallery to replace if insufficient memory is available to store the receive gallery without writing over an existing gallery*), and also including a formatter for converting a clip-art gallery from the format in which the clip-art galleries are stored in the gallery folder to any of a number of other formats (such as e.g. from an 72.times.28 GMS picture format to an 86.times.52 screen saver format or to an 72.times.28 screen saver format, or to other formats in use).
(*Emphasis Added*)

'032 clearly teaches away from determining whether the data can be stored in a single file - the discussion refers to the entire gallery content, which by its very nature, inherently has more than a single file, however, the decision is not whether data may be stored in a single file, but rather whether all of the files in a gallery overwrite files which are already stored in a gallery in memory. 0073, cited by the Examiner for this proposition simply does not address the issue.

Further, the data gathered by '032 is already in graphical form, thus there is no

need to convert to a graphical representation, and the applied reference does not teach nor suggest such a conversion. '032 contains a graphical editor, which is a different beast than Applicants' "converting" step:

[0073] The "Displayed optical messages" submenu item gives access to a displayed optical messages related submenu that comprises the submenu items, "Create message" and "Sent messages". The "Create messages" item gives access to a graphic editor application 72 that allows the user to select the symbols to be displayed. The editor application 72 allows the entry of regular letters and numbers to form words and sentences but is not directed towards the creation of longer text. The editor application comprises however a special symbol selecting feature that assist the user in selecting symbols such as smileys, hearts emergency signals, pictograms, barcodes and any other graphic symbols that a user may wish to display as an optical message. The application contains a symbol library with standardized pictogram lexicons which the user may select symbols from. The image library/gallery can be downloaded from a server such as the Club Nokia.RTM. server. The graphical editor application comprises:

Claim 1 is clearly allowable over the applied art. '032, if anything, seems to teach the reverse of Applicants' method of the invention, in that it begins with a graphic, rather than converting a non-graphic into a graphic representation, as required by Applicants' claims.

Claim 2 requires that the data, if not storable in a single graphics file, be stored in plural graphics files. Again, the Examiner applied '032, 0073, quoted above, which has no teaching or suggesting of using multiple files to store a single graphic representation - it clearly describes storage of multiple file in a gallery, wherein each file contains a single graphic image, and does not teach nor suggest splitting a graphic representation between multiple files. Claim 2 is allowable over the applied art.

Claim 3 is allowable because there is no teaching nor suggestion in '032 0076,

0084 or 0079 that “...storing includes: capturing the graphic representation; determining if the graphic representation is successfully captured; decoding the graphic representation; and storing the decoded graphic representation in a mobile communication device data storage location.”

Initially, 0079 does not teach nor suggest determining whether the graphic is *successfully* captured. Here is 0079:

[0079] The phone 1 comprises an optical character recognition application (OCR) 73 (FIG. 8a) that allows it to recognize characters in text and symbols captured by the camera 35 such as barcode displayed on the large light emitting matrix 14 of other mobile phones.

There is no hint of anything to determine successful capture in the applied portion of ‘032.

Claim 3 is allowable over the applied art because the applied 35 U.S. C. § 102(e) art lacks an important element recited in the claim.

Claim 4 stands rejected under ‘032, 0079, which allegedly teaches reading the graphic representation until capture is successful. 0079 is set forth above. Applicants suggest that not even the broadest, most creative and imaginative reading of this paragraph teaches or suggests the limitations of claim 4. The language of 0079 is quite equivocal: “...OCR...allows it to recognize....” There is nothing to suggest a QC protocol which recognizes a failed capture and causes the MCD to repeat the acquisition process until a graphic representation is successfully captures. Claim 4 is clearly allowable over the applied art.

Claim 5 is allowable because the combination of references applied by the Examiner is not correct: ‘312 teaches away from any combination with ‘032 - col. 4, lines 19-23 of ‘312 require that data transfer be accomplished by conventional hardwire, RF or IR

communication. While '312 describes repair of corrupted computer devices from a central facility, it does not teach nor suggest using a graphical capture and conversion protocol as taught by Applicants. GUIs and CCD were certainly known to the Patentees of '312 when the application was filed in 1997, and yet, they did not acknowledge the use of such tools in their application, for reasons known but to the Patentees. Accordingly, the Examiner's combination fails to teach or suggest the limitations of claim 5, which is allowable over the applied art.

Claim 6 is allowable for the reasons set forth in connection with claim 5 - there is no mention of a PRL in either applied reference - and PRLs were certainly known to the inventors of both references.

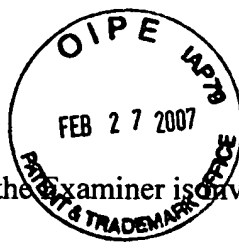
Claim 7 has been amended along the lines of claim 1 and is specific to PRL data. Claim 1 is allowable for the reasons set forth in connection with claims 1 and 6.

Claims 8, 9, 10 and 11 are allowable for the reasons set forth in connection with claims 2, 3, 4 and 5, respectively.

Claim 12 is a combination of claims 1 and 3, and has been amended along the lines of claim 1. Claim 12 is allowable for the reasons set forth in connection with claims 1 and 3.

Claims 13, 14, 15 and 16 are allowable for the reasons set forth in connection with claims 2, 4, 5 and 6, respectively.

In light of the foregoing amendment and remarks, the Examiner is respectfully requested to reconsider the rejections and objections state in the Office action, and pass the application to allowance. If the Examiner has any questions regarding the amendment or



remarks, the Examiner is invited to contact the undersigned.

Provisional Request for Extension of time in Which to Respond

Should this response be deemed to be untimely, Applicants hereby request an extension of time under 37 C.F.R. § 1.136. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any over-payment to Account No. 22-0258.

Customer Number

55376

Respectfully Submitted,

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